

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 13, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP1893-CR

Cir. Ct. No. 2011CF142

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES A. WALLACE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Outagamie County: DEE R. DYER, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. James Wallace appeals those parts of a judgment of conviction that sentenced him as a repeater for substantial battery and disorderly conduct. He also appeals an order denying his postconviction motion to reduce the sentences for those offenses by removing the repeater enhancer. He contends the State failed to prove beyond a reasonable doubt that he was a repeater

under WIS. STAT. § 939.62(2).¹ We reject that argument and affirm the judgment and order.

¶2 The complaint alleged two Minnesota convictions in support of its repeater allegation. The State relies on one of those convictions, a June 9, 2009 conviction and sentence for “attempted offering a forged check.” Under WIS. STAT. § 939.62(2), an actor is a repeater if he or she was convicted of a felony during the five-year period immediately preceding the commission of the crime for which the actor is presently being sentenced. Therefore, if the State presented adequate proof of that conviction, the circuit court could properly sentence Wallace as a repeater.

¶3 The only proof of the earlier conviction was contained in the Presentence Investigation Report (PSI). The PSI contains a four-page chart listing Wallace’s previous convictions. The entry in question states: “12-9-08, Hennepin County, attempted offering a forged check, 06-09-09, sentenced to 1 year 1 day prison.” At the sentencing hearing, the court asked Wallace whether he had a chance to read the PSI. Wallace answered, “Yes, I have.” and stated, “Yes. I went over it with my attorney.” Wallace’s attorney then explained that Wallace does not read or write. However, his counsel spent an hour reading through the PSI with him. When asked whether there were any corrections to the PSI, Wallace’s attorney responded, “Mr. Wallace did not point out ... to me any corrections in the information in the report.”

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

¶4 A PSI that lists the defendant’s crimes and the dates of conviction can be sufficient to constitute an official report and serve as proof of habitual criminality for the purpose of the penalty-enhancement statute. *State v. LaCount*, 2008 WI 59, ¶53, 310 Wis. 2d 85, 750 N.W.2d 780. Under WIS. STAT. § 973.12, the PSI is an official report and is “prima facie evidence of any conviction or sentence therein reported.” The PSI constitutes sufficient evidence to satisfy the State’s burden of proof if it bears sufficient indicia of reliability, such as independent verification of the information rather than reliance on the complaint, or if it includes information not contained in the complaint. *State v. Caldwell*, 154 Wis. 2d 683, 693-95, 454 N.W.2d 13 (Ct. App. 1990).

¶5 Information contained in Wallace’s PSI satisfies the State’s burden of proving the prior conviction beyond a reasonable doubt. The PSI identifies the date of the offense, the name of the offense, the date of conviction and the penalty. It reflects the writer talked to Wallace’s probation agent in Minnesota. In addition, the PSI included numerous details about Wallace’s prior record that were not contained in the complaint, thus indicating the agent independently identified the information in the PSI. Under WIS. STAT. § 939.62(3)(b), for crimes committed in other jurisdictions, “felony means a crime which under the laws of that jurisdiction contains a prescribed maximum penalty of imprisonment in a prison or penitentiary for one year or more.” Regardless of whether the offense was a felony under Minnesota law, it meets the definition of felony for purposes of sentence enhancement.

¶6 By informing the sentencing court that there were no corrections to the PSI, Wallace waived any challenge to the accuracy of the information contained in the PSI. The court specifically asked whether there were any corrections, effectively informing Wallace that he had the right to correct any

errors. Through counsel, Wallace declined to make any corrections. Therefore, he intentionally relinquished or abandoned a known right, thereby waiving his right to object to the contents of the PSI. *See State v. Ndina*, 2009 WI 21, ¶29, 315 Wis.2d 653, 761 N.W.2d 12. Because Wallace waived any challenge to the content of the PSI, and the PSI is prima facie evidence of the 2009 felony conviction in Minnesota, the State presented sufficient proof of Wallace's repeater status.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

